

KENNETH E. HARDMAN

MOIR & HARDMAN
ATTORNEYS AT LAW
1015 – 18TH STREET, N.W., SUITE 800
WASHINGTON, DC 20036-5204
FACSIMILE: (202) 833-2416
EMAIL: kenhardman@worldnet.att.net

DIRECT DIAL: (202) 223-3772

March 28, 2002

EX PARTE COMMUNICATION

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
445 – 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: Paging Coalition Petition for Declaratory Ruling
CC Docket No. 01-346

Dear Mr. Caton:

During the meeting between the Commission's staff and members of the Paging Coalition on February 25, 2002, the Coalition was invited to address in more detail Verizon's contention in its opposition comments that its Type 3A and similar offerings are a "billing service" which is "generally unregulated" (Verizon Comments at p. 7), rather than an interconnection arrangement as contended by the Coalition. The purpose of this letter is to respond to that invitation.

At the outset, the Coalition points out that Verizon does not define or cite any authority whatsoever for its notion of a "billing service" which is "generally unregulated;" and Verizon's use of that phrase does not conform to any terminology recognized by the Commission heretofore. The Commission *has* recognized a category known as "billing and collection services"¹ (aka "third party billing and collection services"),² which are not a common carrier communications service for purposes of Title II but are subject to the Commission's Title I jurisdiction nonetheless.³ The Commission defined such billing and collection services in relevant part as "a service

¹ *Detariffing of Billing and Collection Services (Notice of Proposed Rulemaking)*, 100 FCC 2d 607 (FCC 1985); *id.* (Report and Order), 102 FCC 2d 1150 (FCC 1986).

² *E.g., AT&T 900 Dial-It Services and Third Party Billing and Collection Services*, 4 FCC Rcd 3429, 3433 (CCB 1989) (Emphasis added).

³ *Detariffing of Billing and Collection Services, supra*, 102 FCC 2d at 1169 ("Our conclusion that local exchange carrier billing and collection for an interexchange carrier is not a common carrier communication service for purposes of Title II does not automatically compel the conclusion that we should terminate existing regulation of that activity or refrain from imposing other forms of regulation. We could invoke our ancillary jurisdiction under Title I of the Communications Act for that purpose.")

provided by a local exchange carrier to an interexchange carrier (IC), whereby the [LEC] bills and collects from end users subscribing to an IC's service," including the functions of "recording IC message detail, aggregating the details to create individual messages (a call originated by an IC's end user), applying the IC's rates to such messages, processing these rated messages into customer invoice form, mailing bills, collecting payments, accepting customer deposits, handling customer inquiries and investigating billing evasion activities."⁴

Even excluding from the definition aspects that relate to the "collection" part of "billing and collection services," Verizon's Type 3A and similar offerings bear no meaningful resemblance to the activities described by the Commission as "billing and collection services". First, the telecommunications service being "billed" is *not* provided by the paging carrier or any other third party, and there is no privity between the calling party in a Type 3A service and the paging carrier.⁵ Instead, the underlying telecommunications service, *i.e.*, the transmission of the call between the originating telephone and the premises of the paging carrier, is provided directly by Verizon. Thus, in a Type 3A arrangement, Verizon actually is doing the "billing" for a telecommunications service it provides; it is not doing the billing on behalf of any third party or for a telecommunications service provided by any third party.

From the outset, the Commission has explicitly distinguished between "billing and collection for a communication service that [a carrier] offers individually or as a joint offering with other carriers," on the one hand, and "'billing and collection for the offering of another unaffiliated carrier," on the other hand.⁶ The former remains "an incidental part of [that] communications service" while the latter "is not a communication service for purposes of Title II of the Communications Act." *Id.* The Commission's determination was later explained as meaning that "billing and collection activities [are] not . . . Title II activities *because the LEC [is] not billing for its own telecommunications service*, but rather, on behalf of another carrier".⁷ In Type 3A and similar services, by contrast, Verizon clearly is billing for its own telecommunications service.⁸ This

⁴ *Detariffing of Billing and Collection Services, supra*, 100 FCC 2d at 607 & n. 1; 102 FCC 2d at 1150 & n. 2.

⁵ While it is commonly the case that the calling party who is placing the page happens to be an employee or other member of the paging carrier's customer, the calling party can be anyone in the world. That is, there is no legal restriction on the use of Type 3A service confining it to the paging carrier's subscribers, comparable to the restrictions on the use of an interexchange carrier's toll service to authorized subscribers of the service.

⁶ *Detariffing of Billing and Collection Services, supra*, 102 FCC 2d at 1168.

⁷ *AT&T 900 Dial-It Services and Third Party Billing and Collection Services, supra*, 4 FCC Rcd at 3433. (Emphasis added).

⁸ Indeed, in its reply comments, Verizon claims that in Type 3A it "provides a toll service— it carries calls from one rate center to another— but it bills the service to the CMRS provider rather than to the caller." Reply of Verizon, February 4, 2002, at p. 3. Under the Commission's precedents, Verizon's acknowledgement that it is billing for its own telecommunications service— irrespective of the party receiving the bill— is fatal to its claim that Type 3A is a "billing service" which is "generally unregulated".

crucial fact alone confirms that the Type 3A and comparable services properly are classified as a Title II telecommunications service subject to the provisions of that title, such as Sections 201 and 251, and that they cannot plausibly be dismissed as merely a “billing service” which is “generally unregulated”.

Other characteristics of the “billing and collection services” described by the Commission also confirm this conclusion. As defined by the Commission, the elements of “billing and collection services” include such vital tasks as “recording . . . message detail,” “aggregating the details to create individual messages” and “applying . . . rates to such messages”. Verizon does not do any of these tasks in Type 3A and similar services.

Instead, where Verizon imposes a per minute usage charge for the service, it simply records aggregate conversation minutes for calls delivered to the NXX codes designated for Type 3A service and bulk bills the paging carrier the aggregate usage for all such calls in the billing period. A specimen bill of this type is attached as Exhibit 1. Similarly, where Verizon imposes a per call charge for the service, it simply does a “peg” count for all calls delivered to the NXX codes designated for Type 3A service and bulk bills the paging carrier the aggregate number of all such calls during the billing period. This process does not even remotely resemble the message detail functionality involved in the “billing and collection services” described by the Commission.

Similarly, a key element of the “billing and collection services” defined by the Commission is that they constitute a discrete activity that itself is subject to actual or potential competition.⁹ Again, in the case of Type 3A and similar offerings, there is no conceivable way to divorce the “billing” aspect of the service from the underlying transmission service provided by Verizon; nor is it feasible to have competition in the “billing” aspect.¹⁰ Instead, the “billing” is an integral part of the entire offering – a characteristic that again is fatal to Verizon’s attempt to dismiss Type 3A and comparable offerings as merely a “billing service” that is “generally unregulated”.

The Commission’s logic in this regard is unassailable. If an activity is not subject to competition, or at least to the *potential* development of competition, there is no principled basis whatsoever for removing it from the Commission’s jurisdiction under Title II of the Act. Accordingly, Verizon’s own claim that the “billing” component of Type 3A service cannot be separated from Verizon’s underlying transmission service points directly to the conclusion that Type 3A service

⁹ *AT&T 900 Dial-It Services and Third Party Billing and Collection Services*, *supra*, 4 FCC Rcd at 3433 (“The clear thrust of the Commission’s Billing and Collection Order is that carrier billing and collection services should not be tariffed if such billing and collection is not an interstate common carrier communications service subject to Title II of the Act and the provision of such services is subject to competition or the likelihood of competition.” (Emphasis added).

¹⁰ Verizon admits as much when it states that continuation of such arrangements must be conditioned upon paging carriers “agree[ing] not to offer number portability to their customers and not to port these [Type 3A] numbers to another LEC.” (Verizon Opposition at p. 2). In other words, Verizon itself is claiming that the “billing” function incidental to the service cannot feasibly be separated from the underlying transmission service.

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in its entirety is subject to the Commission's Title II jurisdiction as a communications common carrier service. More particularly, as explained at length by the Coalition in its petition for declaratory ruling and in its reply to comments, Type 3A and similar arrangements are an inherent part of the terms and conditions of interconnection and, as such, are directly subject to the Commission's jurisdiction under Sections 201 and 251 of the Act.

Very truly yours,

s/ Kenneth E. Hardman

Kenneth E. Hardman

Attorney for the Paging Coalition

cc: Robert Tanner, Esq.
Jared M. Carlson, Esq.



Account number 207 306-7166 886 003 0
 Billing period May 16 - Jun 15, 2001
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306
04082

Verizon important numbers
 No charge applies on calls to any of the below telephone numbers if placed from within the 207 area code.
 Verizon provides local and long distance service within the 207 area code.

Customer service

8:00 am - 5:30 pm Monday - Friday

For questions about your Verizon Bill

To order or change your service

1 800 884-8825

(1 207) 555-1515

1 877 872-4554

Repair service

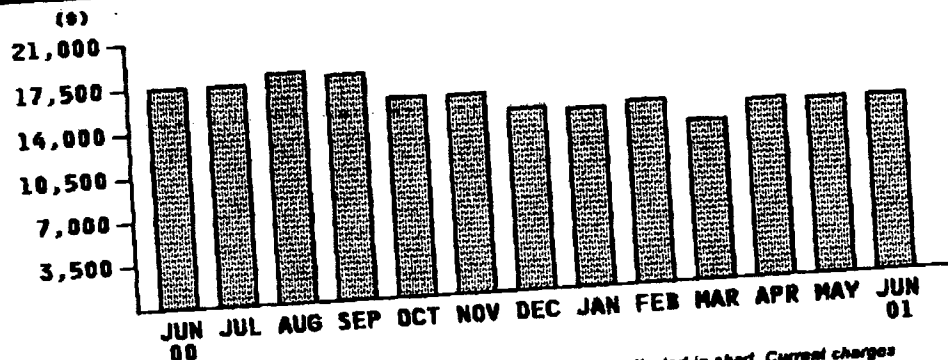
Questions about Verizon Yellow Pages Directory Advertising

Customer news

Important Information On Busy Line Verification and Busy Line Interrupt Services

Maine customers can now take advantage of Verizon's Busy Line Verification and Busy Line Interrupt Services for a comparable rate. For \$2.50 per request you can ask a Verizon operator to verify if a number is busy or for \$5.00 you can ask the operator to interrupt the call. The new rates took effect in late February.

Comparative analysis Verizon calling services



Note: Adjustments to previous Calling Services amounts are not reflected in chart. Current charges in the Comparative Analysis are itemized under the Calling Services section to follow. Monthly fluctuations are possible due to the number of business days in a calendar month.

Verizon current charges

Calling services

Federal tax

State tax

Total new charges for Verizon

Calling services

\$14,002.74

420.08

700.14

\$15,122.96



Account number 207 306-7166 686 003 0
Billing period May 15 - Jun 15, 2001
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3A PAGING SERVICE

DETAIL OF USAGE CHARGES

RATE CATEGORY	QUANTITY	RATE	AMOUNT
NUMBER OF CALLS	1,016,409	.000	0.00
ACTUAL MINUTES USED	233,379	.060	14,002.74
TOTAL OF 3A PAGING SERVICE			14,002.74
Total of calling services			\$14,002.74

u Verizon

Bell Atlantic-NE

NYNEX

New England Telephone